IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Blue Macellari, an individual, Plaintiffs, vs. Rusty Carroll, an individual, R2C2, Inc., a corporation, and DigitalSmiths Corporation, a corporation, Defendants.	)	Civil Action No. 05-4161-JPG

DEFENDANT DIGITALSMITHS
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant DigitalSmiths Corporation ("DigitalSmiths") hereby moves this Court to dismiss the Complaint of Plaintiff Blue Macellari ("Plaintiff") under Federal Rules 12(b) and 12(c). The grounds for this motion, as set forth more fully in the Memorandum of Law filed herewith, are as follows:

1. Plaintiff's claims of Contributory and Vicarious Copyright Infringement fail because Plaintiff does not hold a copyright registration for the allegedly infringed work identified in her Complaint. See 17 USC § 411(a).

2. Each of Plaintiff's claims which relies upon state law is barred as a result of the immunity created by the Communications Decency Act of 1996. See 47 USCS § 230; Zeran v America Online, 129 F3d 327 (4th Cir. 1997).

3. Plaintiff does not have standing to sue under the Illinois Consumer Fraud and Deceptive Business Practices Act. Champion Parts, Inc. v. Oppenheimer & Co., 878 F.2d 1003 (7th Cir. 1989); DeJohn v. TV Corp. Int'l, 245 F. Supp. 2d 913 (N.D. Ill. 2003); Swartz v.

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Schaub, 818 F. Supp. 1214 (N.D. Ill. 1993); Barille v. Sears Roebuck & Co., 682 N.E.2d 118 (Ill. App. 1997).

4. Plaintiff has failed to plead a proper claim for defamation as she has not identified a single false statement made by DigitalSmiths. Chisolm v. Foothill Capital Corp., 3 F.Supp. 2d 925 (N.D. Ill. 1998). Further, Plaintiff has failed to plead any special damages arising from her defamation claim. Quilici v. Second Amendment Found., 769 F.2d 414, 417 (7th Cir. 1985); American Needle & Novelty Inc. v. Drew Pearson Marketing, Inc., 820 F.Supp. 1072, 1076 (N.D. Ill. 1993). Finally, Plaintiff's Defamation claim is preempted by the Copyright Act. See 17 U.S.C. § 301(a); Toney, 406 F.3d at 909-10.

5. Plaintiff's False Light Invasion of Privacy claim is preempted under the Copyright Act and fails to state a claim. 17 U.S.C. § 301(a); Grossman v. Smart, 807 F.Supp. 1404 (C.D.Ill. 1992); Toney v. L'Oreal USA, Inc., 406 F.3d 905, 909-10 (7th Cir. 2005).

6. Plaintiff's Unjust Enrichment claim is preempted by the Copyright Act. 17 U.S.C. § 301(a); ATC Distribution Group, Inc. v. Whatever It Takes Transmission & Parts, Inc., 402 F.3d 700 (6th Cir. 2005); Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296 (2d Cir. 2004).

For the foregoing reasons, DigitalSmiths requests that the Complaint filed against it by Plaintiff hereby be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 28, 2005, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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